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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, D.C.

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SEP 28 1994

In re:

Amendment of Part 74 of the
Commission's Rules with Regard to
the Instructional Television
Fixed Service

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) MM Docket No. 93-24
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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

To: The Commission

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**JOINT REPLY COMMENTS OF
EDUCATIONAL PARTIES**

American Council on Education, Arizona Board of Regents for Benefit of the
University of Arizona, California State University - Sacramento, Instructional
Telecommunications Consortium of the American Association of Community Colleges,
Kirkwood Community College, St. Louis Regional Educational and Public Television
Commission, South Carolina Educational Television Commission, State of Wisconsin -
Educational Communications Board, University of Maine System, University of Wisconsin
System and University System of the Ana G. Mendez Educational Foundation (jointly, the
"Educational Parties"), provide these reply comments in response to comments filed by
other parties in this proceeding.

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Framework to Evaluate Comments

Curiously, only one commentor besides the Educational Parties recognized explicitly the inherent tension between the Further Notice's two goals -- increased efficiency and deterrence of abuse. The Hispanic Information and Telecommunications Network ("HITN") urges the FCC to focus its efforts on promoting efficiency in its processes. The Educational Parties also cannot stress too strongly the importance of this goal. Rather than tinker with a variety of new regulatory requirements for ITFS applications, as many of the wireless cable commentors in this proceeding have urged, the FCC should make the ITFS application process as uncluttered as possible. To deter abuse, the FCC need only enforce existing requirements when deficiencies are pointed out.

Window Filing System

The Educational Parties supported changing to a window filing procedure for new ITFS applications and major changes, but only if the FCC commits to opening at least four windows per year. This same view received virtually unanimous support from other ITFS and wireless cable commentors. If the FCC adopts a window procedure without regular filing windows on at least a quarterly basis, it ignores the experienced judgment of virtually the entirety of the ITFS and wireless cable community.^{1/}

^{1/} This year's delay in the acceptance and processing of ITFS applications relying on NTIA funding is instructive of the problem that will result if regular, frequent windows are not opened. Despite assurances from staff, at least two entities represented by undersigned counsel did not receive negotiated NTIA grants because the FCC waited too long in issuing its most recent ITFS cutoff list.

Financial Qualifications

The Educational Parties urged the Commission not to adopt financial documentation requirements for ITFS applications beyond the certification now requested in Section III of FCC Form 330. They also urged that the noncommercial "reasonable assurance" standard underlying the certification continues to be appropriate as it recognizes the special fiscal realities of public and nonprofit entities. Other commentators suggested a variety of new requirements, such as documentation or certifications by ITFS applicants or their wireless cable backers, as well as random checks by the FCC. One party, American Telecasting, Inc. ("ATI"), actually suggested that the FCC use the clearly inappropriate commercial broadcast financial qualification standard. The Educational Parties agree with the comments of ACS Enterprises, Inc. et al. ("ACS") and CAI Wireless Systems, Inc. ("CAI"), who suggest that it is unnecessary for the FCC to delve further into financial qualifications issues and that its doing so might disserve the public interest.

Application Caps

The Educational Parties urged the FCC to consider a reasonable application cap per window of between three and five applications by non-local ITFS applicants and 25 applications backed by any given wireless cable entity, where the wireless cable backer does not already control by lease or ownership any licensed ITFS or MDS channels in the market. A number of commentators opposed the application cap proposal. However, the Wireless Cable Association, International ("WCAI") and ATI, one of the country's largest operators, both support caps so long as they do not apply to major changes or to ITFS

applications backed by wireless cable operators with a demonstrable commitment to providing service in a given market. The Educational Parties concur with this approach.

Expedited Consideration Process

The Educational Parties urged that this procedure should not be adopted as the staff would have to expend substantial resources to determine which applications were eligible and to enforce relevant requirements. Also, they were concerned that the substantial number of applicants requesting expedited consideration could defeat the purpose of the proposal and result in ITFS applications by educational entities always ending up on the bottom of the pile. Although many wireless cable entities backed an expedition procedure under various circumstances, no ITFS commentators supported the idea. The Educational Parties continue to believe that a formal process for expedited consideration should not be implemented, but the staff should take account of special circumstances on a case-by-case basis.

Application of the Four-Channel Rule

The comments in this proceeding reflect considerable confusion about the purpose behind the term "area of operation." As pointed out by the Educational Parties, it has nothing to do with interference protection; therefore, use of a co-channel protected service area definition is irrelevant. The issue is whether one educator should be permitted to apply for a second ITFS station in any given area. Under these circumstances, the proposal by the Educational Parties -- having the FCC adopt a functional test that looks to

whether a second ITFS station is necessary to serve receive sites that cannot reasonably be served by a first ITFS station -- is the only appropriate solution.

Offset Operation

The Educational Parties supported the adoption of a requirement of offset operation for new or modified ITFS stations where a co-channel interference problem could thereby be resolved. However, they suggested that technical tests would show that a D/U ratio in excess of 28 dB would be appropriate in such circumstances. WCAI now suggests a D/U ratio of 39 dB. The Educational Parties concur with that assessment.

Receive Site Interference Protection

The Educational Parties suggested that the FCC might routinely protect receive sites out to 35 miles from the transmitter, but urged that ITFS applicants should be able to make a showing of unique circumstances that might justify protection beyond 35 miles. At least one other party, ATI, seems to agree that the 35 mile standard should be adopted as a "rebuttable presumption." While other parties, including WCAI, urged that the 35 mile figure is artificial, they opted for an equally artificial construct for ITFS, the MMDS protected service area. Ultimately, there seems to be little issue that the FCC should protect ITFS receive sites that can receive a usable signal. The only issue is the circumstances in which a particular receive site needs to document its ability to obtain a usable signal. The Educational Parties urge that, outside of 35 miles, the ITFS applicant should be required to demonstrate that a receive site can receive a usable signal. Inside 35

miles, the FCC should presume that a receive site is serviceable, unless that presumption is rebutted by a technical showing to the contrary filed by some other party.

Major Modifications

The Educational Parties found troublesome the FCC's proposal to change the definition of major modifications in Section 74.911. The effect of the proposal was to push more applications over the major change line, requiring applicants to wait for filing windows. A number of wireless cable commentators suggested that the FCC might better look to the modification provisions in Part 21 of the rules for MMDS stations and apply those rules to ITFS. Under those rules, certain minor changes can be constructed on the 21st day following public notice of the application, unless notified to the contrary (Section 21.41). Other modifications do not even require prior authorization (Section 21.42). Others (major modifications) require prior FCC approval after the FCC gives public notice (Section 21.40). Upon consideration of these provisions, the Educational Parties would not object to a similar structure for ITFS stations, so long as there are regular, frequent opportunities to file major change applications.

Reasonable Assurance of Receive Sites

The Educational Parties urged the FCC not to require a statement from each applicant, listing receive sites' contact people, titles and telephone numbers, or any new documentation from receive sites. Unfortunately, several wireless cable commentators support additional documentation requirements. The Educational Parties continue to believe that the proposed requirements are unnecessary, will create a substantial additional

paperwork burden for applicants, and will form a convenient forum of attack for parties that may try to harass or undermine the participation of an applicant's receive sites. All in all, the Educational Parties believe there is little reason for the FCC to insert itself further into the ITFS operator/receive site relationship.

Accreditation of Applicants

The Educational Parties suggested that the FCC need not consider the accreditation of receive sites beyond that now necessary to establish the eligibility of non-accredited applicants. As the Educational Parties noted, the FCC must take care not to miss the most important development in education in the United States today -- the use of telecommunications for delivery of educational fare to students at both school and non-school sites. All sites where legitimate ITFS programming (as defined in Section 74.931(a), (b) and (c)) is received should be licensed and provided interference protection. There is no basis to limit protection to receive sites taking only certain types of the permissible forms of ITFS programming.

The Educational Parties thus strongly object to the view of WCAI that non-accredited receive sites getting only "informal" programming should not be entitled to interference protection. In many of the ITFS systems operated by the Educational Parties or those they represent, certain receive sites (such as work places) may receive important educational programming for training and similar purposes that does not at any given time qualify as "formal" instructional programming. However, "informal" programming is

authorized and fully legitimate under Section 74.931, and its reception should be protected. WCAI's suggestion should be vigorously rejected by the FCC.^{2/}

Other Matters

WCAI addresses one other issue, the FCC's treatment of applications to extend ITFS construction periods. WCAI suggests that these applications should go on public notice and 30 days should be provided for parties to object. The Educational Parties have no objection to this proposal, so long as the FCC continues to give appropriate consideration to situations where an ITFS licensee is unable to complete construction for legitimate reasons. The Educational Parties note that WCAI "has no problem" with extending construction deadlines in cases where equipment is ordered in a timely fashion but delayed because of manufacturer backlogs, where an application to co-locate with other facilities in the market is pending, where nodes in a statewide educational network are being built in systematic fashion over an extended period, or where unanticipated events have frustrated a licensee's efforts to construct in a timely fashion. These and other legitimate justifications should continue to be available in support of extensions.

^{2/} If the FCC wants to start evaluating the validity of ITFS programming, it should start with ITFS licensees who, at the behest of wireless cable operators, believe it is appropriate to run CNN, C-Span, Discovery, The Learning Channel or even Nickelodeon on a full-time basis in satisfaction of the requirements of Section 74.931. If WCAI wants to deny interference protection to receive sites only using Nickelodeon, the Educational Parties have no objection.

Conclusion

The Educational Parties urge the Commission to approve the window filing procedure and adopt other rules consistent with its Joint Comments and these Reply Comments.

Respectfully submitted,

AMERICAN COUNCIL ON EDUCATION

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By: Todd D. Gray
Todd D. Gray

Their Attorney

DOW, LOHNES & ALBERTSON
1255 Twenty-third Street, N.W.
Suite 500
Washington, D.C. 20037
(202)857-2571

September 28, 1994